

REMARKS

Upon receipt of this response, the Examiner is respectfully requested to contact the undersigned representative of the Applicant to arrange a telephone interview concerning the inventive merits of this application.

Accompanying this response is an Information Disclosure Statement which makes Augustine et al. `101 of record in this case. This reference was recently located a few weeks ago with respect to a search undertaken by our Australian associate concerning this matter. It is respectfully submitted that Augustine et al. `101 discloses an arrangement which is similar to disclosure of the Tomic-Edgar `144 citation. That is, a U-shaped inflatable chamber delivers warm air to the patient's space. The warm air is delivered by way of holes punched in the surface of the U-shaped chamber (see reference number 49 in Fig. 5) and also see column 4, lines 39-41 of that specification. It is respectfully submitted that this arrangement suffers from basically the same problems as Tomic-Edgar `144. Further, "jetting" through the apertures 43 may occur and, in addition, the material is not porous in the sense clearly intended by the presently pending specification and claims.

The Applicant respectfully submits that conventional dictionary definitions, for both "pervious" and "porous," supports the Applicant's position that those two terms are essentially synonymous with one another. Notwithstanding this, the Applicant is amending the claims to recite the term "porous" instead of "pervious".

As previously noted, one of the major problems that the present invention addresses is the prior problem that can occur when using blankets with discrete holes to provide warming (see the Background of the Invention section and, in particular, page 2 first paragraph as well as lines 28-33 on that page). As is clear from the pending description and accompanying claims, the presently claimed invention is not claiming a heating apparatus where the material is punctured by plurality of discrete holes providing a plurality of hot air passages. Instead, the presently claimed invention is directed at and claims a material in which the material is sufficiently porous so that the warm air is delivered to the patient receiving space via the entire surface of the porous material. None of the applied art is believed to in any way teach, suggest, disclose or remotely hint at such claimed feature.

Claims 15-16, 18-19, 21, 27, 29-30 and 32-36 are rejected, under 35 U.S.C. § 103, as being unpatentable over United States Patent No. 5,165,400 (Berke `400) in view of United States Patent No. 6,277,144 (Tomic-Edgar `144). The Applicant acknowledges and respectfully

traverses the raised obviousness rejection in view of the above amendments and the following remarks.

Berke `400 has been previously discussed at length in the responses filed December 12, 2007 and April 6, 2007. As acknowledged by the Examiner on page 2 of the March 31, 2008 official action, Berke `400 fails to disclose that one layer of the blanket has a portion of its surface formed of porous material so that air is delivered to the patient receiving space via the entire surface of the porous material. Berke `400, instead, discloses a hyperthermia article comprising a general U-shaped hollow body having sets of air holes spaced about a portion of the surface of the article. The air holes allow air to pass through the otherwise impervious surface layer.

Some potential problems of such air holes are discussed in the background section of the Applicant's specification. One such problem is the "jetting" of air, which leads to unwanted cooling of the patient and this is to be avoided.

Next, the Examiner applies Tomic-Edgar `144 and asserts that this reference teaches the feature of the warm air being delivered via "the entire surface of the previous material." The Applicant respectfully disagrees with this assertion. It is respectfully submitted that Tomic-Edgar `144, in fact, adds little or nothing to the disclosure of Berke `400. As can be clearly seen in the drawings--especially Fig 4A--and described, in particular, in column 3 lines 5-16, the thermal conditioning apparatus is constructed of a first material layer 110 and a second material layer 120 of non-permeable material. It is, in fact, preferable that the layers 110, 120 provide the necessary non-permeability such that the apparatus is inflatable. To deliver the thermally conditioned air to the patient, the apparatus includes plurality of orifices 130 (see column 3, lines 29-31). See also column 4, lines 55-58, which state that the "thermal medium is delivered to the patient via the plurality of orifices 130 formed in the left extending portion 106 and the right extending portion 108".

Further, in column 6, the preferred embodiment of the apparatus is described as being constructed of a first material layer 110 and a second material layer 120. The first material layer 110 in this embodiment includes an external surface layer 400 and a coating layer 410, which is again described as being constructed of "any of non-permeable material to allow for inflation" (emphasis added, col. 6, lns. 59-61). The first material layer 110 of this embodiment also contains orifices 130 for delivering air to the patient, however for the sake of clarity have been omitted from Fig. 4B.

The Applicant asserts that with regard to the issues as stated above and in the specification there is no difference between Berke `400 and Tomic-Edgar `144. That is,

both teach an apparatus having a layer made of an *impermeable material* with orifices arranged to deliver air to the patient. By having a similar construction, the devices of Berke `400 and Tomic-Edgar `144 both have similar problems such as the “jetting” effect created by the air passing through the orifices resulting in the problems previously discussed in detail during prosecution of the present application and briefly referred to above.

The Applicant contends that as Berke `400 and Tomic-Edgar `144 are both very similar apparatuses, there appears to be no motivation to combine their teachings with one another in the manner alleged by the Examiner. Moreover, even if Berke `400 and Tomic-Edgar `144 were properly combinable with one another--and the Applicant adamantly denies this is the case--there is still no teaching, suggest, disclosure or hint from the applied combination of essential features as presently recited in the pending claims. That is, neither Berke `400 and Tomic-Edgar `144 in any way teaches, suggests, discloses or remotely hints at a *porous material* by which warmed air may be delivered over the entire surface of the porous material. Specifically, the claims of the application include the limitation of “the blanket [having] a portion of its surface formed of porous material so that the warmed air is delivered to the patient receiving space via the entire surface of the porous material.”

In view of the above amendments and remarks, it is respectfully submitted that all of the raised rejections should be withdrawn at this time. If the Examiner disagrees with the Applicant's view concerning the withdrawal of the outstanding rejections or applicability of the Berke `400 and/or Tomic-Edgar `144 references, the Applicant respectfully requests the Examiner to indicate the specific passage or passages, or the drawing or drawings, which contain the necessary teaching, suggestion and/or disclosure required by case law. As such teaching, suggestion and/or disclosure is not present in the applied references, the raised rejection should be withdrawn at this time. Alternatively, if the Examiner is relying on his/her expertise in this field, the Applicant respectfully requests the Examiner to enter an affidavit substantiating the Examiner's position so that suitable contradictory evidence can be entered in this case by the Applicant.

If any further amendment to this application is believed necessary to advance prosecution and place this case in allowable form, the Examiner is courteously solicited to contact the undersigned representative of the Applicant to discuss the same.

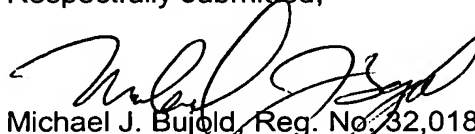
In view of the foregoing, it is respectfully submitted that the raised rejection(s) should be withdrawn and this application is now placed in a condition for allowance. Action to that end, in the form of an early Notice of Allowance, is courteously solicited by the Applicant at this time.

10/538,303

The Applicant respectfully requests that any outstanding objection(s) or requirement(s), as to the form of this application, be held in abeyance until allowable subject matter is indicated for this case.

In the event that there are any fee deficiencies or additional fees are payable, please charge the same or credit any overpayment to our Deposit Account (Account No. 04-0213).

Respectfully submitted,



Michael J. Bujold, Reg. No. 32,018

Customer No. 020210

Davis Bujold & Daniels, P.L.L.C.

112 Pleasant Street

Concord, NH 03301-2931

Telephone 603-226-7490

Facsimile 603-226-7499

E-mail: patent@davisandbujold.com